



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Item No. 401
IB/421/ND/2021

IN THE MATTER OF:

Kotak Mahindra Bank	...	Applicant
Versus		
GK Dairy And Milk Products Pvt Ltd	...	Respondent

Order under Section 7 of IBC, 2016.

Order delivered on 13.07.2023

CORAM:

MR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Mr. Deepak Garg, Adv.
For the Respondent :

ORDER

In view of the order passed in Item No. 2 (as per today's cause list dated 13.07.2023) in IA No. 1221/ND/2022 & IA No. 5926/ND/2022 which are pronounced today, the main matter is now fixed for 03.08.2023.

Sd/-
DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Mukesh

Sd/-
P.S.N. PRASAD
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No. 2

IA/1221/ND/2022, IA/5926/ND/2022 IN IB/421/ND/2021

IN THE MATTER OF:

Kotak Mahindra Bank	...	Applicant
Versus		
GK Dairy And Milk Products Pvt Ltd	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 13.07.2023

Coram:

DR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA/1221/ND/2022 is taken on record along with amended Form-1 dated 28.02.2022.

IA/5926/ND/2022 stands allowed.

Sd/-
DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

I.A./1221/ND/2022

IN

Company Petition No. (IB)-421/ND/2021

(Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

M/s. Kotak Mahindra Bank Limited

.... Applicant/ Financial Creditor

Versus

M/s. GK Dairy and Milk Products Private Limited

.... Respondent / Corporate Debtor

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on:13.07.2023

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The above application i.e., I.A./1221/ND/2022 is filed by M/s. Kotak Mahindra Bank Limited ('Applicant') under Section 60(5) of the Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, who is the financial creditor in main petition i.e., C.P.(IB)/421/ND/2021 praying for the following relief(s):-

- a) To allow the Financial Creditor/ Applicant to amend the FORM 1 dated 02.08.2021 by taking on record the amended Form 1 dated 28.02.2022 in order to adjudicate the CIRP Petition filed under



Section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor Company;

- b) Take on record the additional documents as annexed with the present Interlocutory Application which shall be material evidence to prove the existence of the debt due and payable to the Financial Creditor/ Applicant Bank and the default as committed by the Corporate Debtor along with the documents already placed on record through the main Company Petition.
- c) Pass any orders as the Hon'ble Adjudicating Authority may deem fit and proper in the interest of equity, law and justice.

2. Briefly stated the facts of the present case as averred by the applicant are that the applicant is the Financial Creditor who had filed the main Company Application bearing No. C.P.(IB) No.421/ND/2021 against M/s. GK Dairy And Milk Products Private Limited ('Corporate Debtor'/'Respondent') seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor having defaulted in the payment of the Financial Debt due and payable to the Applicant.
3. The Applicant submits that the present Interlocutory Application is filed to amend the pleadings under FORM 1 dated 02.08.2021 filed by the Applicant through C.P.(IB)/421/ND/2021 herein against the Corporate debtor seeking initiation of the CIRP against the Corporate Debtor.
4. Further, it was also submitted that the Applicant had inadvertently mentioned the Date of Default in the FORM 1 to be the date of Non Performing Asset (NPA) of the Account of the Corporate Debtor i.e. 30.06.2020 whereas the default had occurred on 29.02.2020. To support its contention, the Applicant had placed reliance on case titled as **Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy &Anr. hearing Civil Appeal No. 1650 of 2020.**
5. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor had submitted that the date of default as mentioned in Part-IV of Form I of



C.P.(IB) 421/ND/2021 is 30.06.2020 i.e., the date of classification of the Account of the Corporate Debtor as NPA which is after the cut-off date of 25.03.2020 as provided under Section 10A of the Code, 2016. Further, it was submitted that the default date being 30.06.2020, the Applicant/ Financial Creditor has no right to file an Application under Section 7 of the Code, 2016 by the virtue of IBC (Second Amendment) Act, 2020, which suspended the initiation of Corporate Insolvency Resolution Process under Section 7, 9 and 10 of IBC, 2016 for any default arising on or after 25th March 2020 for a period of six months initially.

6. Moreover, the Respondent contended that default can only be the Date of Declaration of Account as Non-Performing Asset ['NPA'] and date of default cannot be shifter. To support the contention, the Respondent placed reliance on Hon'ble NCLAT Judgement in **Jagdish Prasad Sarada vs. Allahabad Bank, Company Appeal (AT) (Insolvency) No.183f 2020.**
7. We have heard the Ld. Counsels for the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been perused.
8. Sans irrelevant facts, adverting to the factual matrix of the present case the main Company Application i.e., C.P.(IB)421/ND/2021 is filed under Section 7 of the Code, 2016 seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor having defaulted in the payment of the Financial Debt due and payable to the Applicant for an amount of Rs.24,50,10,577.77/- as on 29.04.2021 and the date of default mentioned in Part-IV of Form I of the main petition is the date when the account was declared NPA i.e. 30.06.2020. The Applicant through the present Interlocutory Application seeks the rectification/amendment of the date of default mentioned in the Form-1 of the main Company Application (C.P.(IB)421(ND)/2021) to 29.02.2020 as the date of default and not



30.06.2020 (date of declaring NPA) as the date of default. The copy of the amended Form 1 dated 28.02.2022 with date of default as 29.02.2020 filed by the Applicant seeking to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor Company is annexed as **Annexure A-1 (pg. no. 14-48)** to the captioned Interlocutory Application.

9. An Application under Section 7 of the Code, 2016 can be amended and additional documents can be filed by the parties in proceedings under Section 7 of the Code, 2016. With regard to the Corporate Debtor's contention that the captioned interlocutory application is a well thought plan after the defence of maintainability under Section 10 A of the Code, 2016, the same was raised by the Corporate Debtor in its reply, but this Adjudicating Authority as on date has not given any finding on the date of default. The Corporate Debtor may take note of the same.
10. The issue of determining the correct date of default shall be adjudicated by this Adjudicating Authority after hearing the arguments of both the parties in the main Company Petition i.e., (C.P.(IB)421(ND)/2021). Further, the Corporate Debtor has already raised an objection in his reply regarding the date of default i.e., 30.06.2020 as mentioned in the earlier Form-1 dated 02.08.2021.
11. Accordingly, subject to the aforesaid observation, the present application i.e., **I.A./1221/ND/2022 taken on record along with** amended Form-1 dated 28.02.2022 filed by the applicant as Annexure A-1. The matter will be determined along with C.P. (IB) 421/ND/2021.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (JUDICIAL)